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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 MICHAEL J. B.,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL  
14 SECURITY,

15 Defendant.

CASE NO. 2:18-CV-00442-DWC

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

16 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of  
17 Defendant's denial of Plaintiff's applications for supplemental security income ("SSI") and  
18 disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil  
19 Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by  
20 the undersigned Magistrate Judge. *See* Dkt. 5.

21 After considering the record, the Court concludes the Administrative Law Judge ("ALJ")  
22 erred when he failed to give legally sufficient reasons to reject medical opinion evidence from  
23 Drs. Jenna Yun, Ph.D., and Rodger Meinz, Ph.D. Had the ALJ properly considered these medical  
24 opinions, the residual functional capacity ("RFC") may have included additional limitations. The

ORDER REVERSING AND REMANDING  
DEFENDANT'S DECISION TO DENY BENEFITS

1 ALJ's error is therefore not harmless, and this matter is reversed and remanded pursuant to  
2 sentence four of 42 U.S.C. § 405(g) to the Commissioner of Social Security ("Commissioner")  
3 for further proceedings consistent with this Order.

#### 4 FACTUAL AND PROCEDURAL HISTORY

5 On November 13, 2014, Plaintiff filed applications for SSI and DIB, alleging disability as  
6 of December 15, 2008.<sup>1</sup> See Dkt. 8, Administrative Record ("AR") 15. The applications were  
7 denied upon initial administrative review and on reconsideration. See AR 15. ALJ Eric S. Basse  
8 held a hearing on January 27, 2017. AR 42-112. In a decision dated June 28, 2017, the ALJ  
9 determined Plaintiff to be not disabled. AR 12-38. The Appeals Council denied Plaintiff's  
10 request for review of the ALJ's decision, making the ALJ's decision the final decision of the  
11 Commissioner. See AR 1-6; 20 C.F.R. § 404.981, § 416.1481.

12 In Plaintiff's Opening Brief, Plaintiff maintains the ALJ erred by failing to provide: (1)  
13 specific, legitimate reasons to discount medical opinion evidence from Drs. Yun and Meinz; and  
14 (2) specific, clear and convincing reasons to reject Plaintiff's subjective symptom testimony.  
15 Dkt. 12, pp. 2-18. Plaintiff, due to these alleged errors, requests the Court remand this matter for  
16 an award of benefits. *Id.* at 18.

#### 17 STANDARD OF REVIEW

18 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
19 social security benefits if the ALJ's findings are based on legal error or not supported by  
20 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
21 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

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22  
23 <sup>1</sup> Because the Social Security Administration ("SSA") had already adjudicated and denied another  
24 disability claim from Plaintiff – which was administratively final as of August 12, 2013 – the ALJ found "the  
relevant period with respect to [Plaintiff's] current applications begin [sic] August 13, 2013, the day after the date of  
the most recent determination." AR 15. Plaintiff does not challenge this finding from the ALJ. See Dkt. 12.

DISCUSSION

**I. Whether the ALJ properly considered the medical opinion evidence.**

Plaintiff contends the ALJ failed to properly consider medical opinion evidence from examining physicians, Drs. Yun and Mainz. Dkt. 12, pp. 2-16.

In assessing acceptable medical sources, the ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician’s opinion is contradicted, the opinion can be rejected “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish this by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

**A. Dr. Yun**

Plaintiff first challenges the ALJ’s treatment of Dr. Yun’s opinion. Dkt. 12, pp. 2-13. Dr. Yun conducted a psychological/psychiatric evaluation of Plaintiff on September 16, 2016. AR 591-605. Dr. Yun’s evaluation included a record review of a previous evaluation report, a clinical interview, a mental status examination, and other testing, including a Beck Anxiety Inventory. AR 591-605.

Dr. Yun opined Plaintiff has moderate limitations in his ability to perform routine tasks without special supervision, be aware of normal hazards and take appropriate precautions, and

1 ask simple questions or request assistance. AR 594. Dr. Yun also determined Plaintiff has  
2 marked limitations in his ability to: understand, remember, and persist in tasks by following very  
3 short and simple instructions; understand, remember, and persist in tasks by following detailed  
4 instructions; perform activities within a schedule, maintain regular attendance, and be punctual  
5 within customary tolerances without special supervision; and make simple work-related  
6 decisions. AR 593-94. Further, Dr. Yun found Plaintiff severely limited in his ability to learn  
7 new tasks, adapt to changes in a routine work setting, and communicate and perform effectively  
8 in a work setting, indicating an inability to perform these activities. *See* AR 593-594. Likewise,  
9 Dr. Yun opined Plaintiff has severe limitations in his ability to maintain appropriate behavior in a  
10 work setting, set realistic goals and plan independently, and complete a normal work day and  
11 work week without interruptions from psychologically based symptoms. AR 594.

12 The ALJ gave “little weight” to Dr. Yun’s opinion that Plaintiff “suffers from marked  
13 cognitive and social limitations due to his mental impairments.” AR 28 (citation omitted). The  
14 ALJ reasoned:

15 I give little weight because, in forming her opinion, (1) Dr. Yun appeared to rely  
16 greatly on the claimant’s self-reported symptoms rather than her own observations  
17 of the claimant’s presentation at the mental status examination which documented  
18 that the claimant was “somewhat relaxed” and demonstrated that he was not  
19 markedly limited in her [sic] memory, concentration, insight, and judgment. (2)  
20 Further, Dr. Yun’s opinion is not consistent with the claimant’s presentations  
21 during various interviews and examinations, and the claimant’s activities of daily  
22 living. (3) Finally, Dr. Yun’s opinion contrasts sharply with the claimant’s own  
23 admission of improved symptoms after treatment and that he is ready to go to  
24 work.

AR 28 (citations omitted) (numbering added).

21 First, the ALJ discounted Dr. Yun’s opinion because he found Dr. Yun appeared to base  
22 her opinion on Plaintiff’s self-reports rather than her own observations. AR 28. An ALJ may  
23 reject a physician’s opinion “if it is based ‘to a large extent’ on a claimant’s self-reports that have  
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1 | been properly discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.  
2 | 2008) (quoting *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)). But  
3 | this is not a legally sufficient reason to reject a physician’s opinion where the physician does not  
4 | discredit the claimant’s reports and provides her own observations in support of her findings. *See*  
5 | *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). Further, a  
6 | clinical interview and mental status evaluation are “objective measures” which “cannot be  
7 | discounted as a self-report.” *See Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017).

8 |         Here, the record does not show Dr. Yun discredited Plaintiff’s subjective reports.  
9 | Moreover, the record reflects that in reaching her opinion, Dr. Yun observed Plaintiff, conducted  
10 | a clinical interview and mental status examination, and made clinical findings relevant to her  
11 | opinion. AR 591-95. For instance, Dr. Yun determined Plaintiff had “[m]oderate; chronic”  
12 | symptoms of difficulty concentrating and irritability. AR 592. Dr. Yun further wrote in her  
13 | clinical findings that Plaintiff had “[s]evere” difficulties with avoidance behaviors,  
14 | circumscribed interests, behavioral rigidity, perseverative thinking, repetitive behaviors, social  
15 | impairments, and concrete thinking. AR 592-93. Similarly, in stark contrast to the ALJ’s finding  
16 | that Plaintiff was “not markedly limited in her [sic] memory, concentration, insight, and  
17 | judgment,” Dr. Yun found Plaintiff *not* within normal limits in the mental status examination in  
18 | memory, concentration, abstract thought, and insight and judgment. *Compare* AR 28 with AR  
19 | 594-95.

20 |         As the record does not show Dr. Yun relied more heavily on Plaintiff’s self-reported  
21 | symptoms than on her own objective observations and findings, the ALJ’s first reason for  
22 | discounting Dr. Yun’s opinion is not specific and legitimate nor supported by substantial  
23 | evidence. *See Ryan*, 528 F.3d at 1199-1200 (an ALJ cannot reject “an examining physician’s  
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1 opinion by questioning the credibility of the patient's complaints where the doctor does not  
2 discredit those complaints and supports [her] ultimate opinion with [her] own observations").

3         Second, the ALJ gave Dr. Yun's opinion little weight because he found it inconsistent  
4 with Plaintiff's presentation during other examinations and activities of daily living. AR 28  
5 (citations omitted). An ALJ may discount a physician's opinion which is inadequately supported  
6 "by the record as a whole." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.  
7 2004) (citation omitted). An ALJ may also discount a physician's findings if those findings  
8 appear inconsistent with a plaintiff's daily activities. *See Rollins v. Massanari*, 261 F.3d 853, 856  
9 (9th Cir. 2001). In any event, an ALJ cannot reject a physician's opinion in a vague or  
10 conclusory manner. *See Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing  
11 *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996). As the Ninth Circuit has stated:

12         To say that medical opinions are not supported by sufficient objective findings or  
13 are contrary to the preponderant conclusions mandated by the objective findings  
14 does not achieve the level of specificity our prior cases have required, even when  
15 the objective factors are listed seriatim. The ALJ must do more than offer his  
16 conclusions. He must set forth his own interpretations and explain why they,  
17 rather than the doctors', are correct.

18 *Embrey*, 849 F.2d at 421.

19         Here, although the ALJ asserted that aspects of Dr. Yun's opinion were inconsistent with  
20 the record and cited to particular records, the ALJ failed to explain how those aspects of the  
21 record undermined Dr. Yun's findings. *See* AR 28. In other words, the ALJ "merely state[d] that  
22 the objective factors point toward an adverse conclusion," but "ma[de] no effort to relate any of  
23 these objective factors" to particular findings from Dr. Yun. *See Embrey*, 849 F.2d at 422. "This  
24 approach is inadequate." *Id.*

       In addition, the Court notes many of the records cited by the ALJ are not necessarily  
inconsistent with Dr. Yun's opinion. *See, e.g.*, AR 527 (another mental status examination,

1 containing multiple errors), AR 531 (email from Plaintiff's mom to a psychiatrist, describing  
2 Plaintiff's family history and cognitive difficulties), AR 543 (physical examination treatment  
3 notes, noting in part that Plaintiff "[h]as all markers of autistic spectrum"), AR 554 (physical  
4 examination of Plaintiff after a head injury), AR 577 (Plaintiff reporting that his hobbies include  
5 cutting and collecting wood and collecting baseball cards). Given the ALJ's conclusory  
6 reasoning and lack of clear record support, the Court cannot find this reason to reject Dr. Yun's  
7 opinion is specific and legitimate or supported by substantial evidence. *See Treichler v. Comm'r*  
8 *of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014) (citation omitted) ("the ALJ must  
9 provide some reasoning in order for us to meaningfully determine whether the ALJ's conclusions  
10 were supported by substantial evidence"); *see also Blakes v. Barnhart*, 331 F.3d 565, 569 (7th  
11 Cir. 2003) (citations omitted) ("We require the ALJ to build an accurate and logical bridge from  
12 the evidence to [his] conclusions so that we may afford the claimant meaningful review of the  
13 SSA's ultimate findings.").

14 Third, the ALJ gave Dr. Yun's opinion little weight because he found it contrary to  
15 Plaintiff's "own admission of improved symptoms after treatment and that he is ready to go to  
16 work." AR 28 (citations omitted). Nonetheless, as explained above, an ALJ cannot reject a  
17 physician's opinion in a vague or conclusory manner. *See Garrison*, 759 F.3d at 1012-13  
18 (citation omitted); *Embrey*, 849 F.2d at 421-22. Rather, the ALJ "must set forth his own  
19 interpretations and explain why they, rather than the doctors', are correct." *Embrey*, 849 F.2d at  
20 421-22.

21 In this instance, the ALJ failed to explain how Plaintiff's statements of improvement and  
22 willingness to work are inconsistent with Dr. Yun's opinion. *See* AR 28. Further, the treatment  
23 records the ALJ cited show that Plaintiff once reported a desire to work, and sometimes  
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1 described improved mental health symptoms. *See, e.g.*, AR 606 (Plaintiff reporting a “desire to  
2 work”), AR 615 (Plaintiff stating “he has been able to set boundaries better”). But such brief  
3 statements do not necessarily undermine Dr. Yun’s opinion that Plaintiff has limitations in his  
4 ability to “sustain” basic work activities “over a normal workday and workweek on an ongoing,  
5 appropriate, and independent basis.” *See* AR 593-94. Therefore, in light of the ALJ’s lack of  
6 explanation and analysis supported by the record, this is not a specific, legitimate reason to  
7 discount Dr. Yun’s opinion. *See Garrison*, 759 F.3d at 1012-13 (citation omitted) (an ALJ errs  
8 when he assigns a medical opinion “little weight while . . . criticizing it with boilerplate language  
9 that fails to offer a substantive basis for his conclusion”); *McAllister v. Sullivan*, 888 F.2d 599,  
10 602 (9th Cir. 1989) (an ALJ’s rejection of a physician’s opinion on the ground that it was  
11 contrary to the record was “broad and vague, failing to specify why the ALJ felt the treating  
12 physician’s opinion was flawed”).

13 In addition to the errors described above, the Court notes the ALJ’s decision contained  
14 another error. Specifically, while the ALJ wrote he gave “little weight” to Dr. Yun’s opinion  
15 about Plaintiff’s “marked” limitations, the ALJ did not state the weight he gave to Dr. Yun’s  
16 opinion about Plaintiff’s severe limitations. *See* AR 28. These limitations, such as that Plaintiff is  
17 unable complete a normal work day and work week without interruptions from psychologically  
18 based symptoms, are also not in the RFC. *See* AR 22; *see also* AR 593 (defining a “severe”  
19 limitation as an “inability to perform the particular activity”). Because the ALJ did not include  
20 the severe limitations in the RFC, it appears he intended to reject them. Yet an ALJ “may not  
21 reject ‘significant probative evidence’ without explanation.” *Flores v. Shalala*, 49 F.3d 562,  
22 570-71 (9th Cir. 1995) (quoting *Vincent v. Heckler*, 739 F.2d 1393,1395 (9th Cir. 1984)).  
23 Accordingly, the ALJ erred by failing to explain the weight he gave to the severe limitations Dr.  
24



1 Yun opined. *See id.* at 571 (an ALJ’s written decision must state reasons for disregarding  
2 significant probative evidence); *see also Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir.  
3 2015) (the ALJ must “set forth the reasoning behind [his] decisions in a way that allows for  
4 meaningful review”).

5 In all, the ALJ failed to provide any specific and legitimate reason, supported by  
6 substantial evidence, to reject Dr. Yun’s opinion. As such, the Court considers whether the ALJ’s  
7 error is harmless.

8 Harmless error principles apply in the Social Security context. *Molina v. Astrue*, 674 F.3d  
9 1104, 1115 (9th Cir. 2012). An error is harmless only if it is not prejudicial to the claimant or  
10 “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v. Comm’r of Soc.*  
11 *Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see also Molina*, 674 F.3d at 1115. The Ninth  
12 Circuit has held “‘a reviewing court cannot consider an error harmless unless it can confidently  
13 conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a  
14 different disability determination.’” *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015)  
15 (quoting *Stout*, 454 F.3d at 1055-56). The determination as to whether an error is harmless  
16 requires a “case-specific application of judgment” by the reviewing court, based on an examination  
17 of the record made “‘without regard to errors’ that do not affect the parties’ ‘substantial rights.’”  
18 *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

19 In this case, had the ALJ properly considered Dr. Yun’s opinion, the RFC and  
20 hypothetical questions posed to the vocational expert (“VE”) may have contained additional  
21 limitations. For example, while Dr. Yun found Plaintiff markedly limited in his ability to  
22 understand, remember, and persist in tasks by following very short and simple instructions, the  
23 RFC and hypothetical questions found Plaintiff could perform simple tasks. AR 22, 101-09, 593.

1 Dr. Yun moreover found Plaintiff unable to complete a normal work day and work week without  
2 interruptions from psychologically based symptoms, but the RFC and hypothetical questions did  
3 not include this restriction. AR 22, 101-09, 594. Because the ultimate disability determination  
4 may have changed if Dr. Yun's opinion had been given greater weight, the ALJ's errors are not  
5 harmless and require reversal.

6 B. Dr. Mainz

7 Plaintiff next challenges the ALJ's treatment of Dr. Mainz's opinion. Dkt. 12, pp. 13-16.  
8 Dr. Mainz conducted a psychological evaluation of Plaintiff on November 14, 2014. AR 529-38.  
9 Dr. Mainz's evaluation included a mental status examination; a Wechsler Adult Intelligence  
10 Scale-IV test to measure Plaintiff's cognitive functioning; and a Woodcock-Johnson-III test to  
11 measure Plaintiff's academic skill functioning. AR 535-36, 538. Additionally, Dr. Mainz's  
12 evaluation included reviewing an e-mail message from Plaintiff's mother about his history and  
13 her perception of his limitations, and talking with Plaintiff about his vocational, social,  
14 educational, and medical history. AR 529-35. After the evaluation, Dr. Mainz summarized his  
15 findings and concluded, in relevant part:

16 It will likely take a couple years at a minimum of [mental health treatment] and  
17 med[ication] adjustments before [Plaintiff] could be work ready. [Plaintiff]  
18 acknowledged that he is too much of an emotional wreck to go to work. . . . In a  
sentence, the results of this evaluation support a finding that [Plaintiff] would not  
be able to hold any job at this time and in the near future[.]

19 AR 537.

20 The ALJ rejected Dr. Mainz's opinion that Plaintiff could not hold any job at that time  
21 and in the near future for four reasons:

22 I give little weight to Dr. Mainz's opinion because (1) it is not consistent with Dr.  
23 Mainz's own observations of the claimant during the examination when he noted  
that the claimant showed good attitude, talked normally with adequately  
24 formulated and articulated thoughts, and that he was not hypersensitive or not

1 easily distracted. (2) Moreover, Dr. Mainz's opinion is not consistent with the  
2 claimant's presentations during various interviews and examinations, and the  
3 claimant's activities of daily living. (3) Finally, as noted above, in May 2015 and  
4 December 2016, the claimant stated that his symptoms have improved and he is  
5 ready to go to work if he is not awarded disability. (4) Dr. Mainz did not have the  
6 benefit of reviewing the other medical reports contained in the current record.

7 AR 28 (citations omitted) (numbering added).

8 First, the ALJ discounted Dr. Mainz's opinion because he found his findings inconsistent  
9 with Dr. Mainz's own observations of Plaintiff. AR 28. An ALJ may sufficiently reject a  
10 physician's opinion if it is "inadequately supported by clinical findings." *Bayliss*, 427 F.3d at  
11 1216 (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). Yet the ALJ here again  
12 failed to explain how any of the cited observations undermine Dr. Mainz's opinion that Plaintiff  
13 could not work. *See* AR 28; *see also Embrey*, 849 F.2d at 421 (an ALJ errs when he states a  
14 medical opinion is contrary to the objective findings without further explanation, "even when the  
15 objective factors are listed seriatim").

16 Moreover, the ALJ's conclusory rationale overlooked abnormal findings from Dr.  
17 Mainz's evaluation. For instance, Dr. Mainz noted Plaintiff's "mood and interpersonal  
18 interactions were quite mercurial." AR 536. Dr. Mainz furthermore wrote that Plaintiff  
19 "frequently launched into fiery politicalized comments[.]" AR 536. Despite Dr. Mainz  
20 "repeatedly inform[ing]" Plaintiff that it "was a clinical interview [and] not a political forum,"  
21 Plaintiff insisted on discussing political issues. AR 536. Dr. Mainz also noted that it seemed like  
22 it would not "take much to elicit an . . . aggressive response on [Plaintiff's] part." AR 536. In all,  
23 Dr. Mainz found Plaintiff "progressively isolated," "angry," "hypersensitive to criticism," and  
24 "obsessive-compulsive." AR 537. Thus, the ALJ's selective record reliance is not a specific,  
legitimate reason, supported by substantial evidence, to reject Dr. Mainz's opinion. *See Reddick*,  
157 F.3d at 722-23 (an ALJ must not "cherry-pick" certain observations without considering their

1 context); *see also Attmore v. Colvin*, 827 F.3d 872, 875 (9th Cir. 2016) (quoting *Tackett v. Apfel*,  
2 180 F.3d 1094, 1098 (9th Cir. 1999)) (the Court “cannot affirm . . . ‘simply by isolating a specific  
3 quantum of supporting evidence,’ but ‘must consider the record as a whole, weighing both  
4 evidence that supports and evidence that detracts from the [Commissioner’s] conclusion.’”).

5 The ALJ’s second and third reasons for rejecting Dr. Mainz’s opinion are the same legally  
6 erroneous reasons the ALJ gave for rejecting Dr. Yun’s opinion – that is, that Dr. Mainz’s opinion  
7 is inconsistent with Plaintiff’s presentation in other examinations, daily activities, desire to work,  
8 and reports of improvement. AR 28. The ALJ also cited the same records as he did in his  
9 evaluation of Dr. Yun’s opinion. *See* AR 28. Yet as previously explained, such reasoning is  
10 invalid, as the ALJ’s statements are conclusory and unsupported by the cited records. Additionally,  
11 as with Dr. Yun’s opinion, Plaintiff’s brief statements of his desire to work and improvement do  
12 not necessarily undermine Dr. Mainz’s opinion that Plaintiff is unable to work. Accordingly, the  
13 ALJ’s second and third reasons for rejecting Dr. Mainz’s opinion are legally insufficient.

14 Lastly, the ALJ gave Dr. Mainz’s opinion little weight because he did not review other  
15 medical reports. AR 28. Once again, however, the ALJ used vague, conclusory reasoning, as he  
16 failed to explain how the fact how the fact that Dr. Mainz did not review any medical evidence  
17 impacted his assessment. *See* AR 28. This error is heightened by the fact that Dr. Mainz conducted  
18 his own examination of Plaintiff upon which he could base his assessment. *See* AR 529-38. Due to  
19 the ALJ’s lack of explanation as to how Dr. Mainz’s opinion was impacted by his failure to review  
20 other reports, this is not a specific and legitimate reason upon which the ALJ could discount Dr.  
21 Mainz’s opinion. *See Embrey*, 849 F.2d at 421 (an ALJ errs when he states a medical opinion is  
22 contrary to the record without further explanation).

1 After considering the record and the ALJ's findings, the Court finds the ALJ failed to  
2 provide a specific and legitimate reason, supported by substantial evidence, for giving little  
3 weight to Dr. Mainz's opinion. As such, the ALJ erred. Because Dr. Mainz opined Plaintiff was  
4 unable to work, the ultimate disability determination may have changed had the ALJ given great  
5 weight to Dr. Mainz's opinion. Thus, the ALJ's error is not harmless and requires reversal.

6 On remand, if the ALJ intends to discount any medical opinion, he is directed to provide  
7 specific, non-conclusory reasons for doing so.

8 **II. Whether the ALJ properly considered Plaintiff's subjective symptom**  
9 **testimony.**

10 Plaintiff also asserts the ALJ failed to provide any specific, clear and convincing reason  
11 to reject Plaintiff's subjective symptom testimony. Dkt. 12, pp. 16-18.

12 Because Plaintiff will be able to present new evidence and testimony on remand, and  
13 because proper consideration of the medical opinion evidence may impact the ALJ's assessment  
14 of Plaintiff's subjective symptom testimony, the Court declines to consider whether the ALJ  
15 erred with respect to Plaintiff's testimony. Instead, the Court directs the ALJ to reweigh  
16 Plaintiff's subjective symptom testimony as necessary on remand.

17 **III. Whether an award of benefits is warranted.**

18 Lastly, Plaintiff requests the Court remand this case for an award of benefits. Dkt. 12, p.  
19 18.

20 The Court may remand a case "either for additional evidence and findings or to award  
21 benefits." *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1992). Generally, when the Court  
22 reverses an ALJ's decision, "the proper course, except in rare circumstances, is to remand to the  
23 agency for additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th  
24 Cir. 2004) (citations omitted). However, the Ninth Circuit created a "test for determining when

evidence should be credited and an immediate award of benefits directed.” *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). Specifically, benefits should be awarded where:

(1) the ALJ has failed to provide legally sufficient reasons for rejecting [the claimant’s] evidence, (2) there are no outstanding issues that must be resolved before a determination of disability can be made, and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited.

*Smolen*, 80 F.3d at 1292.

In this case, the Court has determined the ALJ committed harmful error and has directed the ALJ to re-evaluate the medical opinion evidence from Drs. Yun and Mainz, and Plaintiff’s subjective symptom testimony, on remand. Because outstanding issues remain regarding the medical evidence, Plaintiff’s testimony, the RFC, and his ability to perform jobs existing in significant numbers in the national economy, remand for further consideration of this matter is appropriate.

#### CONCLUSION

Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded Plaintiff was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and this matter is remanded for further administrative proceedings in accordance with the findings contained herein. The Clerk is directed to enter judgment for Plaintiff and close the case.

Dated this 10th day of December, 2018.



David W. Christel  
United States Magistrate Judge